IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICITON

CRIMINAL APPLICATION NO.2569 OF 2005

The State of Maharashtra .. Applicant.

Versus

Dattatraya Ramchandra Khsirsagar
& Another .. Respondents.

Mr.V.B. Konde-Deshmukh for the applicant.

Mr.A.P. Vanarase for respondent Nos.1 and 2.

CORAM : J.P. DEVADHAR, J.

DATED : 4TH AUGUST, 2007.

P.C. :

1. Heard learned A.P.P. for the applicant-State.

2. The State has preferred this application for leave to file appeal against the Judgment and Order dated 4th November, 2004 passed by the Special Judge, Pune in Special Case No.6 of 2002. By the said judgment and order, the learned Special Judge has acquitted the Respondents/accused Nos.1 and 2 who were prosecuted for the offences under the Prevention of Corruption Act, 1988.

3. The prosecution case in brief is that the accused No.1 working as Taluka Inspector of Land Records had demanded bribe of Rs.500/- from the complainant for fixing the boundaries. On 5th June,

2001, after filing complaint in the ACB office, the complainant and the raiding party went to the office of the accused. After some time, both the accused, complainant and the panch went to a hotel, wherein on demand by the accused No.1, the complainant No.1 paid the powdered currency notes to the accused No.2. Then, on getting signal from the complainant the raiding party caught both the accused. The accused No.1 was charged for the offences punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and accused No.2 was charged with the offence under Section 12 of the Prevention of Corruption Act, 1988.

4. By the impugned judgment and order dated 4th November, 2004, the learned Special Judge, Pune acquitted the accused after appraising entire evidence. The learned Judge has held that as per the prosecution the initial demand was made on 22nd June, 2001, whereas, the muster roll of the accused shows that they were on tour on that day. It is held that no evidence is brought on record to show that though on record the accused were shown to be on tour, they were in fact present in the office of land records on 22nd June, 2001. As the amount was not recovered from the accused No.1, and both the accused as well as the complainant were in the hotel, the learned Judge disbelieved the case of the

prosecution that the accused No.1 had directed the complainant to give the amount to the accused No.2. The case of the accused No.2 is that the amount was thrust in his pocket.

5. In the present case, admittedly the complainant is not examined as he was reported to be dead. As the initial demand alleged to have been made on 22nd June, 2001 itself is doubtful in view of the fact that the accused were on tour on that day and moreover, since the money was not recovered from the accused No.1 who is alleged to have demanded bribe, the finding recorded appears to be reasonable and plausible.

6. Although, on the basis of the evidence of the panch witness and the investigating officer, it is possible to take a different view, in the facts and circumstances of the present case, the fact that the lower Court could have taken a different view would not be a ground to interfere. The Apex Court in the case of C. Anthony V/s. K.G. Raghuvan Nair reported in (2003) 1 SCC 1 has observed that unless the findings of the Trial court are perverse or contrary to the material on record, the High Court in Appeal should not substitute its findings, merely because another contrary opinion was possible on the basis of the material on record.

7. In this view of the matter, in my view, the decision taken by the lower Court is a reasonable and possible view and, hence no interference is called for.

8. Accordingly, the application for leave to appeal is rejected.

(J.P. DEVADHAR, J.)